

By: Thompson of Harris, Alonzo

H.B. No. 3016

Substitute the following for H.B. No. 3016:

By: Moody

C.S.H.B. No. 3016

A BILL TO BE ENTITLED

AN ACT

relating to the eligibility of a criminal defendant for an order of nondisclosure of criminal history record information.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.0716 to read as follows:

Sec. 411.0716. APPLICABILITY OF SUBCHAPTER. (a) Except as provided by Subsection (b), this subchapter applies to the issuance of an order of nondisclosure of criminal history record information for an offense committed before, on, or after September 1, 2017.

(b) Section 411.072 applies only to a person described by Subsection (a) of that section who receives a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, on or after September 1, 2017.

SECTION 2. Section 411.072, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) This section applies only to a person who:

(1) was placed on deferred adjudication community supervision under Subchapter C [Section 5], Chapter 42A [Article 42.12], Code of Criminal Procedure, for a misdemeanor other than a misdemeanor:

(A) under Chapter 20, 21, 22, 25, 42, 43, 46, or 71, Penal Code; or

1 (B) with respect to which an affirmative finding
2 under [~~Section 5(k),~~] Article 42A.105(f) [~~42.12~~], Code of Criminal
3 Procedure, was filed in the papers of the case; and

4 (2) has never been previously convicted of or placed
5 on deferred adjudication community supervision for another offense
6 other than a traffic [~~an~~] offense [~~under the Transportation Code~~]
7 that is punishable by fine only.

8 (b) Notwithstanding any other provision of this subchapter
9 or Subchapter F, if a person described by Subsection (a) receives a
10 discharge and dismissal under [~~Section 5(c),~~] Article 42A.111
11 [~~42.12~~], Code of Criminal Procedure, and satisfies the requirements
12 of Section 411.074, the court that placed the person on deferred
13 adjudication community supervision shall issue an order of
14 nondisclosure of criminal history record information under this
15 subchapter prohibiting criminal justice agencies from disclosing
16 to the public criminal history record information related to the
17 offense giving rise to the deferred adjudication community
18 supervision. The court shall determine whether the person
19 satisfies the requirements of Section 411.074, and if the court
20 makes a finding that the requirements of that section are
21 satisfied, the court shall issue the order of nondisclosure of
22 criminal history record information:

23 (1) at the time the court discharges and dismisses the
24 proceedings against the person, if the discharge and dismissal
25 occurs on or after the 180th day after the date the court placed the
26 person on deferred adjudication community supervision; or

27 (2) as soon as practicable on or after the 180th day

1 after the date the court placed the person on deferred adjudication
2 community supervision, if the discharge and dismissal occurred
3 before that date.

4 (d) A person who is not eligible to receive an order of
5 nondisclosure of criminal history record information under this
6 section solely because an affirmative finding under Article
7 42A.105(f), Code of Criminal Procedure, was filed in the papers of
8 the case may file a petition for an order of nondisclosure of
9 criminal history record information under Section 411.0725 if the
10 person otherwise satisfies the requirements of that section.

11 SECTION 3. The heading to Section 411.073, Government Code,
12 is amended to read as follows:

13 Sec. 411.073. PROCEDURE FOR COMMUNITY SUPERVISION
14 FOLLOWING CONVICTION; CERTAIN MISDEMEANORS AND STATE JAIL
15 FELONIES.

16 SECTION 4. Sections 411.073(a), (b), and (d), Government
17 Code, are amended to read as follows:

18 (a) This section applies only to a person placed on
19 community supervision under Chapter 42A [~~Article 42.12~~], Code of
20 Criminal Procedure:

21 (1) following a conviction of:

22 (A) a misdemeanor other than a misdemeanor under
23 Section 106.041, Alcoholic Beverage Code, Section 49.04, 49.05,
24 49.06, or 49.065, Penal Code, or Chapter 71, Penal Code; or

25 (B) a state jail felony under Section 481.115,
26 481.1151, 481.116, 481.1161, or 481.121, Health and Safety Code;

27 and

1 (2) under a provision of Chapter 42A [~~Article 42.12~~],
2 Code of Criminal Procedure, other than Subchapter C [~~Section 5~~],
3 including:

4 (A) a provision that requires the person to serve
5 a term of confinement as a condition of community supervision; or

6 (B) another provision that authorizes placing a
7 person on community supervision after the person has served part of
8 a term of confinement imposed for the offense.

9 (b) Notwithstanding any other provision of this subchapter
10 or Subchapter F, a person described by Subsection (a) whose
11 community supervision is not revoked and who completes the period
12 of community supervision, including any term of confinement imposed
13 and payment of all fines, costs, and restitution imposed, may
14 petition the court that placed the person on community supervision
15 for an order of nondisclosure of criminal history record
16 information under this section if the person:

17 (1) satisfies the requirements of this section and
18 Section 411.074; and

19 (2) has never been previously convicted of or placed
20 on deferred adjudication community supervision for another offense
21 other than a traffic [~~an~~] offense [~~under the Transportation Code~~]
22 that is punishable by fine only.

23 (d) A person may petition the court that placed the person
24 on community supervision for an order of nondisclosure of criminal
25 history record information under this section only on or after:

26 (1) the completion of the community supervision, if
27 the offense for which the person was placed on community

1 supervision was a misdemeanor other than a misdemeanor described by
2 Subdivision (2); [~~or~~]

3 (2) the second anniversary of the date of completion
4 of the community supervision, if the offense for which the person
5 was placed on community supervision was a misdemeanor under Chapter
6 20, 21, 22, 25, 42, 43, or 46, Penal Code; or

7 (3) the fifth anniversary of the date of completion of
8 the community supervision, if the offense for which the person was
9 placed on community supervision was a state jail felony.

10 SECTION 5. Subchapter E-1, Chapter 411, Government Code, is
11 amended by adding Section 411.0731 to read as follows:

12 Sec. 411.0731. PROCEDURE FOR COMMUNITY SUPERVISION
13 FOLLOWING CONVICTION; CERTAIN DRIVING WHILE INTOXICATED
14 CONVICTIONS. (a) This section applies only to a person placed on
15 community supervision under Chapter 42A, Code of Criminal
16 Procedure:

17 (1) following a conviction of an offense under Section
18 49.04, Penal Code, other than an offense punishable under
19 Subsection (d) of that section; and

20 (2) under a provision of Chapter 42A, Code of Criminal
21 Procedure, other than Subchapter C, including:

22 (A) a provision that requires the person to serve
23 a term of confinement as a condition of community supervision; or

24 (B) another provision that authorizes placing a
25 person on community supervision after the person has served part of
26 a term of confinement imposed for the offense.

27 (b) Notwithstanding any other provision of this subchapter

1 or Subchapter F, a person described by Subsection (a) whose
2 community supervision is not revoked and who completes the period
3 of community supervision, including any term of confinement imposed
4 and payment of all fines, costs, and restitution imposed, may
5 petition the court that placed the person on community supervision
6 for an order of nondisclosure of criminal history record
7 information under this section if the person:

8 (1) satisfies the requirements of this section and
9 Section 411.074;

10 (2) has never been previously convicted of or placed
11 on deferred adjudication community supervision for another offense
12 other than a traffic offense that is punishable by fine only; and

13 (3) either:

14 (A) successfully completed a condition of
15 community supervision, or complied with a provision of a court
16 order entered on or after the conviction, that, for a period of not
17 less than six months, restricted the person's operation of a motor
18 vehicle to a motor vehicle equipped with an ignition interlock
19 device; or

20 (B) agrees to comply with an order issued under
21 Subsection (d)(2) restricting the person's operation of a motor
22 vehicle to a motor vehicle equipped with an ignition interlock
23 device for a period of not less than six months.

24 (c) A petition for an order of nondisclosure of criminal
25 history record information filed under this section must include
26 evidence that the person is entitled to file the petition.

27 (d) Except as provided by Subsection (f), after notice to

1 the state, an opportunity for a hearing, and a determination that
2 the person is entitled to file the petition and issuance of an order
3 of nondisclosure of criminal history record information is in the
4 best interest of justice, the court shall:

5 (1) issue an order prohibiting criminal justice
6 agencies from disclosing to the public criminal history record
7 information related to the offense giving rise to the community
8 supervision, if the person satisfied the requirement of Subsection
9 (b)(3)(A); or

10 (2) as a condition of entering any future order of
11 nondisclosure of criminal history record information regarding the
12 offense under Section 49.04, Penal Code, issue an order in a manner
13 consistent with Section 521.246, Transportation Code, restricting
14 the person's operation of a motor vehicle, for a period of not less
15 than six months, to a motor vehicle equipped with an ignition
16 interlock device, if the person satisfied the requirement of
17 Subsection (b)(3)(B).

18 (e) On receiving evidence sufficient to the court that a
19 person ordered to install and use an ignition interlock device
20 under Subsection (d)(2) successfully completed all of the terms of
21 the order and that during the period following the issuance of that
22 order the person has not been convicted of or placed on deferred
23 adjudication community supervision under Subchapter C, Chapter
24 42A, Code of Criminal Procedure, for any offense other than a
25 traffic offense that is punishable by fine only, the court that
26 placed the person on community supervision shall issue an order
27 prohibiting criminal justice agencies from disclosing to the public

1 criminal history record information related to the offense giving
2 rise to the community supervision.

3 (f) A court may not issue an order of nondisclosure of
4 criminal history record information under this section or issue an
5 order under Subsection (d)(2) if the attorney representing the
6 state presents evidence sufficient to the court demonstrating that
7 the commission of the offense for which the order is sought resulted
8 in a motor vehicle accident involving another person, including a
9 passenger in a motor vehicle operated by the person seeking the
10 order of nondisclosure.

11 (g) A person may petition the court that placed the person
12 on community supervision for an order of nondisclosure of criminal
13 history record information under this section only on or after the
14 second anniversary of the date of completion of the community
15 supervision.

16 SECTION 6. Section [411.0735](#), Government Code, is amended to
17 read as follows:

18 Sec. 411.0735. PROCEDURE FOR CONVICTION [~~AND CONFINEMENT~~];
19 CERTAIN MISDEMEANORS AND STATE JAIL FELONIES. (a) This section
20 applies only to a person who:

21 (1) is convicted of:

22 (A) a misdemeanor other than a misdemeanor under
23 Section [106.041](#), Alcoholic Beverage Code, Section [49.04](#), [49.05](#),
24 [49.06](#), or [49.065](#), Penal Code, or Chapter [71](#), Penal Code; or

25 (B) a state jail felony under Section [481.115](#),
26 [481.1151](#), [481.116](#), [481.1161](#), or [481.121](#), Health and Safety Code;

27 and

1 (2) ~~[is sentenced to and serves a period of~~
2 ~~confinement; and~~

3 ~~(3)~~ is not eligible for an order of nondisclosure of
4 criminal history record information under Section 411.073.

5 (b) Notwithstanding any other provision of this subchapter
6 or Subchapter F, a person described by Subsection (a) who completes
7 the person's sentence, including any term of confinement imposed
8 and payment of all fines, costs, and restitution imposed, ~~[period~~
9 ~~of confinement and is released]~~ may petition the court that imposed
10 the sentence for an order of nondisclosure of criminal history
11 record information under this section if the person:

12 (1) satisfies the requirements of this section and
13 Section 411.074; and

14 (2) has never been previously convicted of or placed
15 on deferred adjudication community supervision for another offense
16 other than a traffic ~~[an]~~ offense that is ~~[under the Transportation~~
17 ~~Code]~~ punishable by fine only.

18 (c) After notice to the state, an opportunity for a hearing,
19 and a determination that the person is entitled to file the petition
20 and issuance of the order is in the best interest of justice, the
21 court shall issue an order prohibiting criminal justice agencies
22 from disclosing to the public criminal history record information
23 related to the offense for which the person was convicted ~~[giving~~
24 ~~rise to the confinement]~~.

25 (d) A person may petition the court that imposed the
26 sentence for an order of nondisclosure of criminal history record
27 information under this section only on or after:

1 (1) the date of completion of the person's sentence, if
2 the offense of which the person was convicted was a misdemeanor
3 punishable by fine only;

4 (2) the second anniversary of the date of completion
5 of the person's sentence, if the offense of which the person was
6 convicted was a misdemeanor other than a misdemeanor described by
7 Subdivision (1); or

8 (3) the fifth anniversary of the date of completion of
9 the person's sentence, if the offense of which the person was
10 convicted was a state jail felony [~~period of confinement~~].

11 SECTION 7. Subchapter E-1, Chapter 411, Government Code, is
12 amended by adding Section 411.0736 to read as follows:

13 Sec. 411.0736. PROCEDURE FOR CONVICTION; CERTAIN DRIVING
14 WHILE INTOXICATED CONVICTIONS. (a) This section applies only to a
15 person who:

16 (1) is convicted of an offense under Section 49.04,
17 Penal Code, other than an offense punishable under Subsection (d)
18 of that section; and

19 (2) is not eligible for an order of nondisclosure of
20 criminal history record information under Section 411.0731.

21 (b) Notwithstanding any other provision of this subchapter
22 or Subchapter F, a person described by Subsection (a) who completes
23 the person's sentence, including any term of confinement imposed
24 and payment of all fines, costs, and restitution imposed, may
25 petition the court that imposed the sentence for an order of
26 nondisclosure of criminal history record information under this
27 section if the person:

1 (1) satisfies the requirements of this section and
2 Section 411.074;

3 (2) has never been previously convicted of or placed
4 on deferred adjudication community supervision for another offense
5 other than a traffic offense that is punishable by fine only; and

6 (3) either:

7 (A) successfully completed a condition of the
8 sentence, or complied with a provision of a court order entered on
9 or after conviction, that, for a period of not less than six months,
10 restricted the person's operation of a motor vehicle to a motor
11 vehicle equipped with an ignition interlock device; or

12 (B) agrees to comply with an order issued under
13 Subsection (d)(2) restricting the person's operation of a motor
14 vehicle to a motor vehicle equipped with an ignition interlock
15 device for a period not to exceed six months.

16 (c) A petition for an order of nondisclosure of criminal
17 history record information filed under this section must include
18 evidence that the person is entitled to file the petition.

19 (d) Except as provided by Subsection (f), after notice to
20 the state, an opportunity for a hearing, and a determination that
21 the person is entitled to file the petition and issuance of an order
22 of nondisclosure of criminal history record information is in the
23 best interest of justice, the court shall:

24 (1) issue an order prohibiting criminal justice
25 agencies from disclosing to the public criminal history record
26 information related to the offense for which the person was
27 convicted, if the person satisfied the requirement of Subsection

1 (b)(3)(A); or

2 (2) as a condition of entering any future order of
3 nondisclosure of criminal history record information regarding the
4 offense under Section 49.04, Penal Code, issue an order in a manner
5 consistent with Section 521.246, Transportation Code, restricting
6 the person's operation of a motor vehicle, for a period of not less
7 than six months, to a motor vehicle equipped with an ignition
8 interlock device, if the person satisfied the requirement of
9 Subsection (b)(3)(B).

10 (e) On receiving evidence sufficient to the court that a
11 person ordered to install and use an ignition interlock device
12 under Subsection (d)(2) successfully completed all of the terms of
13 the order and that during the period following the issuance of that
14 order the person has not been convicted of or placed on deferred
15 adjudication community supervision under Subchapter C, Chapter
16 42A, Code of Criminal Procedure, for any offense other than a
17 traffic offense that is punishable by fine only, the court that
18 imposed the sentence shall issue an order prohibiting criminal
19 justice agencies from disclosing to the public criminal history
20 record information related to the offense of which the person was
21 convicted.

22 (f) A court may not issue an order of nondisclosure of
23 criminal history record information under this section or issue an
24 order under Subsection (d)(2) if the attorney representing the
25 state presents evidence sufficient to the court demonstrating that
26 the commission of the offense for which the order is sought resulted
27 in a motor vehicle accident involving another person, including a

1 passenger in a motor vehicle operated by the person seeking the
2 order of nondisclosure.

3 (g) A person may petition the court that imposed the
4 sentence for an order of nondisclosure of criminal history record
5 information under this section on or after the third anniversary of
6 the date of completion of the person's sentence.

7 SECTION 8. Section 411.074, Government Code, is amended to
8 read as follows:

9 Sec. 411.074. REQUIRED CONDITIONS FOR RECEIVING AN ORDER OF
10 NONDISCLOSURE. (a) A person may be granted an order of
11 nondisclosure of criminal history record information under this
12 subchapter and, when applicable, is entitled to petition the court
13 to receive an order under this subchapter only if, during the period
14 after the court pronounced the sentence or placed the person on
15 community supervision, including deferred adjudication community
16 supervision, for the offense for which the order of nondisclosure
17 is requested, and during any applicable waiting period for the
18 person under this subchapter following ~~after~~ completion of the
19 person's sentence or community supervision, including deferred
20 adjudication community supervision ~~[required by this subchapter]~~,
21 the person is not convicted of or placed on deferred adjudication
22 community supervision under Subchapter C, Chapter 42A, Code of
23 Criminal Procedure, for any offense other than a traffic ~~an~~
24 offense that is ~~[under the Transportation Code]~~ punishable by fine
25 only.

26 (b) A person may not be granted an order of nondisclosure of
27 criminal history record information under this subchapter and is

1 not entitled to petition the court for an order of nondisclosure
2 under this subchapter if:

3 (1) the person requests the order of nondisclosure
4 ~~[was convicted or placed on deferred adjudication community~~
5 ~~supervision]~~ for, or the person has been previously convicted of or
6 placed on ~~[any other]~~ deferred adjudication community supervision
7 under Subchapter C, Chapter 42A, Code of Criminal Procedure, for:

8 (A) an offense requiring registration as a sex
9 offender under Chapter 62, Code of Criminal Procedure;

10 (B) an offense under Section 20.04, Penal Code,
11 regardless of whether the offense is a reportable conviction or
12 adjudication for purposes of Chapter 62, Code of Criminal
13 Procedure;

14 (C) an offense under Section 19.02, 19.03,
15 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal
16 Code; or

17 (D) any other offense involving family violence,
18 as defined by Section 71.004, Family Code; or

19 (2) the court makes an affirmative finding that the
20 offense for which the order of nondisclosure ~~[of criminal history~~
21 ~~record information]~~ is requested involved family violence, as
22 defined by Section 71.004, Family Code.

23 SECTION 9. Section 411.0765(a), Government Code, is amended
24 to read as follows:

25 (a) A criminal justice agency may disclose criminal history
26 record information that is the subject of an order of nondisclosure
27 of criminal history record information under this subchapter only:

- 1 (1) to other criminal justice agencies;
- 2 (2) [~~7~~] for criminal justice or regulatory licensing
- 3 purposes;
- 4 (3) to [~~7~~] an agency or entity listed in Subsection
- 5 (b);
- 6 (4) to [~~7~~ or] the person who is the subject of the
- 7 order; or
- 8 (5) for the purpose of complying with a requirement
- 9 under federal law or if federal law requires the disclosure as a
- 10 condition of receiving federal highway funds.

11 SECTION 10. Article [42A.105](#), Code of Criminal Procedure, is

12 amended to conform to Chapter 1279 (S.B. 1902), Acts of the 84th

13 Legislature, Regular Session, 2015, by adding Subsection (f) to

14 read as follows:

15 (f) If a judge places on deferred adjudication community

16 supervision a defendant charged with a misdemeanor other than a

17 misdemeanor under Chapter [20](#), [21](#), [22](#), [25](#), [42](#), [43](#), [46](#), or [71](#), Penal

18 Code, the judge shall make an affirmative finding of fact and file a

19 statement of that affirmative finding with the papers in the case if

20 the judge determines that it is not in the best interest of justice

21 that the defendant receive an automatic order of nondisclosure

22 under Section [411.072](#), Government Code.

23 SECTION 11. Section 32, Chapter 1279 (S.B. 1902), Acts of

24 the 84th Legislature, Regular Session, 2015, is repealed.

25 SECTION 12. To the extent of any conflict, this Act prevails

26 over another Act of the 85th Legislature, Regular Session, 2017,

27 relating to nonsubstantive additions to and corrections in enacted

1 codes.

2 SECTION 13. This Act takes effect September 1, 2017.